

SENATE, No. 1121

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED FEBRUARY 14, 2008

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Essex, Morris, Somerset and Union)

SYNOPSIS

Provides credit under corporation business tax and gross income tax for construction of buildings in accordance with certain energy and environmental performance standards.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing a credit under the corporation business tax and
2 the gross income tax for construction of certain buildings, and
3 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and chapter
4 4 of Title 54A of the New Jersey Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. As used in sections 1 through 4 of this act:

10 “Eligible building” means a building located in the State, which
11 is: (1) a residential multi-family building, with at least four
12 habitable stories, that contains at least 10,000 square feet of interior
13 space; (2) one or more residential multi-family buildings with at
14 least four habitable stories that are part of a single or phased
15 construction project that contains, in the aggregate, at least 20,000
16 square feet of interior space, provided that, in any single phase of
17 the project, at least 10,000 square feet of interior space is under
18 construction or rehabilitation; (3) a building used for commercial or
19 industrial purposes; or (4) any combination of buildings described
20 in paragraphs (1) through (3).

21 “Gold level building” means a building that meets a level of
22 performance that is equivalent to or higher than the second highest
23 level of performance certified under the LEED Rating System.

24 “LEED Green Building Rating System” means the Leadership in
25 Energy and Environmental Design building rating system developed
26 and published by the United States Green Building Council.

27 “LEED Rating System” means the LEED Green Building Rating
28 System or the LEED Residential Green Building Rating System, as
29 appropriate.

30 “LEED Residential Green Building Rating System” means the
31 Leadership in Energy and Environmental Design building rating
32 system for residential buildings, as may be developed by the United
33 States Green Building Council.

34 “Platinum level building” means a building that meets a level of
35 performance that is equivalent to or higher than the highest level of
36 performance certified under the LEED Rating System.

37 “Silver level building” means a building that meets a level of
38 performance that is equivalent to or higher than the third highest
39 level of performance certified under the LEED Rating System.

40
41 2. a. A taxpayer shall be allowed a credit against the tax
42 otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-
43 5) in an amount as may be allowed pursuant to rules and regulations
44 adopted pursuant to subsection b. of section 3 of this act for certain
45 costs of construction paid by the taxpayer for the construction of an
46 eligible building qualifying as a silver level building, a gold level
47 building, or a platinum level building during the privilege period.
48 The amount of credit claimed in a privilege period that cannot be

1 applied for that privilege period due to limitations in this section
2 may be carried over, if necessary, to the five privilege periods
3 following the privilege period for which the credit is first allowed.

4 b. The order of priority of the application of the credit allowed
5 under this section and any other credits allowed by law shall be as
6 prescribed by the Director of the Division of Taxation. The amount
7 of the credit claimed for the privilege period in which the cost is
8 incurred shall not exceed 50 percent of the tax liability otherwise
9 due and shall not reduce the amount of the tax liability to less than
10 the statutory minimum provided in subsection (e) of section 5 of
11 P.L.1945, c.162 (C.54:10A-5).

12 c. To claim the credit authorized under this section, a taxpayer
13 shall apply to the Commissioner of Environmental Protection for
14 certification of credit eligibility. The commissioner shall certify to
15 the Division of Taxation that the property meets the definition of an
16 eligible building, that the construction has been completed in
17 compliance with the requirements for rating as a silver, gold or
18 platinum level building, and the amount of the credit allowed
19 pursuant to the rules and regulations adopted pursuant to subsection
20 b. of section 3 of this act. The taxpayer shall attach the certification
21 to the tax return on which the credit is claimed.

22 d. For any privilege period, a taxpayer may apply a credit
23 under this section only if: (1) the taxpayer has obtained and filed a
24 credit reservation certificate, as described in section 3 of this act,
25 and an eligibility certificate, as described in subsection c. of this
26 section; (2) a certificate of occupancy, for the eligible building that
27 is the subject of the credit, has been issued; and (3) the eligible
28 building remains in service and performs as a silver, gold or
29 platinum level building during that year.

30 e. For each taxpayer who is eligible for a credit under this
31 section, the Commissioner of Environmental Protection shall grant
32 a credit, provided that the credits, in the aggregate and together with
33 those granted pursuant to section 6 of this act, shall not exceed
34 \$10,000,000; provided further that any unused allocable amounts
35 shall roll over to subsequent fiscal years.

36

37 3. a. Upon application by a taxpayer, the Commissioner of
38 Environmental Protection shall issue a credit reservation certificate,
39 where the taxpayer has made a showing that the eligible building
40 qualifies for the allowance of a credit under section 2 of this act.
41 The certificate shall state (1) the earliest privilege period for which
42 the credit may be applied, (2) the maximum amount of the total
43 credit allowed and the maximum amount of credit allowed in any
44 single privilege period, (3) an expiration date, and (4) such other
45 information as the Commissioner of Environmental Protection may
46 prescribe. The certificate shall apply only to the eligible building
47 placed in service by the specified expiration date.

1 Certificates may be issued in the first State fiscal year following
2 the date of adoption of the rules and regulations required pursuant
3 to subsection b. of this section and in the five State fiscal years
4 thereafter.

5 b. Within one year after the date of enactment of this act, the
6 Commissioner of Environmental Protection, in consultation with the
7 President of the Board of Public Utilities, shall adopt rules and
8 regulations in accordance with the "Administrative Procedure Act,"
9 P.L.1968, c.410 (C.52:14B-1 et seq.), to establish the amount of the
10 credit available to a taxpayer pursuant to section 2 of this act. The
11 amount of the credit shall be based on the number of square feet of
12 floor space in the eligible building, the overall size of the building,
13 and the level of certification as a silver, gold or platinum level
14 building. The tax credit shall only be available for eligible
15 buildings qualifying as a silver level building, a gold level building,
16 or a platinum level building. These rules and regulations shall be
17 developed based on the LEED Rating System and any rules and
18 regulations adopted by other states for similar tax credit programs,
19 and shall take into account how construction of the eligible building
20 impacts the local natural environment, uses recycled or recyclable
21 materials, incorporates renewable and energy efficient power
22 generation systems, uses water resources more efficiently, and
23 produces less waste than traditional building practices. These rules
24 and regulations shall set forth requirements for determining the
25 continued performance of the eligible building as a silver, gold or
26 platinum level building.

27
28 4. a. Each taxpayer shall, for any privilege period for which a
29 credit is claimed under section 2 of this act, maintain records of
30 such information as the Commissioner of Environmental Protection
31 and the Director of the Division of Taxation shall determine, and
32 report that information to those agencies in the form and at the time
33 that they shall determine.

34 b. The Commissioner of Environmental Protection and the
35 Director of the Division of Taxation shall adopt, pursuant to the
36 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
37 seq.), such rules and regulations as may be deemed necessary to
38 implement sections 1 through 4 of this act. These rules and
39 regulations shall be designed to maintain high but commercially
40 reasonable standards for obtaining tax credits under sections 1
41 through 4 of this act. The rules and regulations shall establish a
42 reasonable time for submission of applications and shall establish a
43 method allocating credit reservation certificates among eligible
44 applicants, which shall generally be on a first-come, first-served
45 basis.

46 c. On or before four years after the date of enactment of this
47 act, the Commissioner of Environmental Protection, in consultation
48 with the Director of the Division of Taxation, shall prepare and

1 submit a report to the Governor and, pursuant to section 2 of
2 P.L.1991, c.164 (C.52:14-19.1), to the Legislature regarding the
3 number of certificates and taxpayers applying the credit provided
4 for under sections 1 through 4 of this act, the amount of the credits
5 granted, the geographical distribution of the credits granted, and
6 any other information that the Commissioner of Environmental
7 Protection or the Director of the Division of Taxation may deem
8 useful or appropriate, including an evaluation of the effectiveness of
9 the credit as an incentive for the construction of buildings in New
10 Jersey meeting the highest level of performance under the LEED
11 Rating System and any recommendations for the continuation of
12 this credit.

13
14 5. As used in sections 5 through 8 of this act:

15 “Eligible building” means a building located in the State, which
16 is: (1) a residential multi-family building, with at least four
17 habitable stories, that contains at least 10,000 square feet of interior
18 space; (2) one or more residential multi-family buildings with at
19 least four habitable stories that are part of a single or phased
20 construction project that contains, in the aggregate, at least 20,000
21 square feet of interior space, provided that, in any single phase of
22 the project, at least 10,000 square feet of interior space is under
23 construction or rehabilitation; (3) a building used for commercial or
24 industrial purposes; or (4) any combination of buildings described
25 in paragraphs (1) through (3).

26 “Gold level building” means a building that meets a level of
27 performance that is equivalent to or higher than the second highest
28 level of performance certified under the LEED Rating System.

29 “LEED Green Building Rating System” means the Leadership in
30 Energy and Environmental Design building rating system developed
31 and published by the United States Green Building Council.

32 “LEED Rating System” means the LEED Green Building Rating
33 System or the LEED Residential Green Building Rating System, as
34 appropriate.

35 “LEED Residential Green Building Rating System” means the
36 Leadership in Energy and Environmental Design building rating
37 system for residential buildings, as may be developed by the United
38 States Green Building Council.

39 “Platinum level building” means a building that meets a level of
40 performance that is equivalent to or higher than the highest level of
41 performance certified under the LEED Rating System.

42 “Silver level building” means a building that meets a level of
43 performance that is equivalent to or higher than the third highest
44 level of performance certified under the LEED Rating System.

45
46 6. a. A taxpayer shall be allowed a credit against the tax
47 otherwise due pursuant to N.J.S.54A:1-1 et seq. in an amount as
48 may be allowed pursuant to rules and regulations adopted pursuant

1 to subsection b. of section 7 of this act for certain costs the cost of
2 construction paid by the taxpayer for the construction of an eligible
3 building qualifying as a silver level building, a gold level building,
4 or a platinum level building during the taxable year. The amount of
5 credit claimed in a taxable year that cannot be applied for that
6 taxable year due to limitations in this section may be carried over, if
7 necessary, to the five taxable years following the taxable year for
8 which the credit is first allowed.

9 b. The order of priority of the application of the credit allowed
10 under this section and any other credits allowed by law shall be as
11 prescribed by the Director of the Division of Taxation.

12 c. The amount of the credits applied under this section for a
13 taxable year shall not exceed the amount of the taxpayer's liability
14 for tax for the taxable year that bears the same proportional
15 relationship to the total amount of such liability as the amount of
16 the taxpayer's gross income, derived from New Jersey sources and
17 attributable to the business or professional activity in which the
18 taxpayer pays the cost of construction of an eligible building, bears
19 to the taxpayer's entire gross income for that year. Credits allowed
20 pursuant to this section shall be taken only after the taxpayer has
21 taken all credits allowed under section 2 of P.L.2000, c.80
22 (C.54A:4-7). The amount of the credit otherwise allowable under
23 this section which cannot be applied for the taxable year due to the
24 limitations of this subsection may be carried over, if necessary to
25 the five taxable years following the taxable year for which the
26 credit was allowed.

27 d. A partnership shall not be allowed a credit under this section
28 directly, but the amount of credit of a taxpayer in respect of a
29 distributive share of partnership income under the "New Jersey
30 Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined
31 by allocating to the taxpayer that proportion of the credit acquired
32 by the partnership that is equal to the taxpayer's share, whether or
33 not distributed, of the total distributive income or gain of the
34 partnership for its taxable year ending within or with the taxpayer's
35 taxable year.

36 e. To claim the credit authorized under this section, a taxpayer
37 shall apply to the Commissioner of Environmental Protection for
38 certification of credit eligibility. The commissioner shall certify to
39 the Division of Taxation that the property meets the definition of an
40 eligible building, that the construction has been completed in
41 compliance with the requirements for rating as a silver, gold or
42 platinum level building, and the amount of the credit allowed
43 pursuant to the rules and regulations adopted pursuant to subsection
44 b. of section 7 of this act. The taxpayer shall attach the certification
45 to the tax return on which the credit is claimed.

46 f. For any taxable year, a taxpayer may apply a credit under
47 this section only if: (1) the taxpayer has obtained and filed a credit
48 reservation certificate, as described in section 7 of this act, and an

1 eligibility certificate, as described in subsection e. of this section;
2 (2) a certificate of occupancy, for the eligible building that is the
3 subject of the credit, has been issued; and (3) the eligible building
4 remains in service and performs as a silver, gold or platinum level
5 building during that year.

6 g. For each taxpayer who is eligible for a credit under this
7 section, the Commissioner of Environmental Protection shall grant
8 a credit, provided that the credits, in the aggregate and together with
9 those granted pursuant to section 2 of this act, shall not exceed
10 \$10,000,000; provided further that any unused allocable amounts
11 shall roll over to subsequent fiscal years.

12
13 7. a. Upon application by a taxpayer, the Commissioner of
14 Environmental Protection shall issue a credit reservation certificate,
15 where the taxpayer has made a showing that the eligible building
16 qualifies for the allowance of a credit under section 6 of this act.
17 The certificate shall state (1) the earliest taxable year for which the
18 credit may be applied, (2) the maximum amount of the total credit
19 allowed and the maximum amount of credit allowed in any single
20 taxable year, (3) an expiration date, and (4) such other information
21 as the Commissioner of Environmental Protection may prescribe.
22 The certificate shall apply only to the eligible building placed in
23 service by the specified expiration date.

24 Certificates may be issued in the first State fiscal year following
25 the date of adoption of the rules and regulations required pursuant
26 to subsection b. of this section and in the five State fiscal years
27 thereafter.

28 b. Within one year after the date of enactment of this act, the
29 Commissioner of Environmental Protection, in consultation with the
30 President of the Board of Public Utilities, shall adopt rules and
31 regulations in accordance with the "Administrative Procedure Act,"
32 P.L.1968, c.410 (C.52:14B-1 et seq.), to establish the amount of the
33 credit available to a taxpayer pursuant to section 6 of this act. The
34 amount of the credit shall be based on the number of square feet of
35 floor space in the eligible building, the overall size of the building,
36 and the level of certification as a silver, gold or platinum level
37 building. These rules and regulations shall be developed based on
38 the LEED Rating System and any rules and regulations adopted by
39 other states for similar tax credit programs, and shall take into
40 account how construction of the eligible building impacts the local
41 natural environment, uses recycled or recyclable materials,
42 incorporates renewable and energy efficient power generation
43 systems, uses water resources more efficiently, and produces less
44 waste than traditional building practices. These rules and
45 regulations shall set forth requirements for determining the
46 continued performance of the eligible building as a silver, gold or
47 platinum level building.

1 8. a. Each taxpayer shall, for any taxable year for which a
2 credit is claimed under section 6 of this act, maintain records of
3 such information as the Commissioner of Environmental Protection
4 and the Director of the Division of Taxation shall determine, and
5 report that information to those agencies in the form and at the time
6 that they shall determine.

7 b. The Commissioner of Environmental Protection and the
8 Director of the Division of Taxation shall adopt, pursuant to the
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
10 seq.), such rules and regulations as may be deemed necessary to
11 implement sections 5 through 8 of this act. These rules and
12 regulations shall be designed to maintain high but commercially
13 reasonable standards for obtaining tax credits under sections 5
14 through 8 of this act. The rules and regulations shall establish a
15 reasonable time for submission of applications and shall establish a
16 method allocating credit reservation certificates among eligible
17 applicants, which shall generally be on a first-come, first-served
18 basis.

19 c. On or before four years after the date of enactment of this
20 act, the Commissioner of Environmental Protection, in consultation
21 with the Director of the Division of Taxation, shall prepare and
22 submit a report to the Governor and, pursuant to section 2 of
23 P.L.1991, c.164 (C.52:14-19.1), to the Legislature regarding the
24 number of certificates and taxpayers applying the credit provided
25 for under sections 5 through 8 of this act, the amount of the credits
26 granted, the geographical distribution of the credits granted, and
27 any other information that the Commissioner of Environmental
28 Protection or the Director of the Division of Taxation may deem
29 useful or appropriate, including an evaluation of the effectiveness of
30 the credit as an incentive for the construction of buildings in New
31 Jersey meeting the highest level of performance under the LEED
32 Rating System and any recommendations for the continuation of
33 this credit.

34
35 9. This act shall take effect immediately and shall apply to
36 qualified construction expenses of an eligible building incurred
37 after the date of enactment of this act, and shall expire with
38 privilege periods and taxable years beginning on and after July 1 of
39 the sixth year thereafter.

40 41 42 STATEMENT

43
44 This bill establishes a corporation business tax credit and a gross
45 income tax credit for costs incurred in the construction of an
46 eligible building qualifying as a silver level building, a gold level
47 building, or a platinum level building under the LEED Green
48 Building Rating System or the LEED Residential Green Building

1 Rating System, as appropriate. “LEED” refers to the Leadership in
2 Energy and Environmental Design “green building” rating system
3 developed and published by the United States Green Building
4 Council.

5 The bill defines “eligible building” as a building located in the
6 State, which is: (1) a residential multi-family building, with at least
7 four habitable stories, that contains at least 10,000 square feet of
8 interior space; (2) one or more residential multi-family buildings
9 with at least four habitable stories that are part of a single or phased
10 construction project that contains, in the aggregate, at least 20,000
11 square feet of interior space, provided that, in any single phase of
12 the project, at least 10,000 square feet of interior space is under
13 construction or rehabilitation; (3) a building used for commercial or
14 industrial purposes; or (4) any combination of buildings described
15 in (1) through (3) above.

16 The bill directs, within one year after the date of enactment of
17 this bill into law, the Commissioner of Environmental Protection in
18 consultation with the President of the Board of Public Utilities, to
19 adopt rules and regulations to establish the amount of the tax credit
20 available to a taxpayer pursuant to this bill. The amount of the
21 credit would be based on the number of square feet of floor space in
22 the eligible building, the overall size of the building, and the level
23 of certification as a silver, gold or platinum level building under the
24 LEED Green Building Rating System or the LEED Residential
25 Green Building Rating System, as appropriate. These rules and
26 regulations shall be developed based on the LEED Rating System
27 and any rules and regulations adopted by other states for similar tax
28 credit programs. In addition, these rules and regulations would take
29 into account how construction of the eligible building impacts the
30 local natural environment, uses recycled or recyclable materials,
31 incorporates renewable and energy efficient power generation
32 systems, uses water resources more efficiently, and produces less
33 waste than traditional building practices. These rules and
34 regulations would also set forth requirements for determining the
35 continued performance of the eligible building as a silver, gold or
36 platinum level building.

37 The total amount of the tax credits available under the bill would
38 be \$10 million. Lastly, the bill would require the Commissioner of
39 Environmental Protection, in consultation with the Director of the
40 Division of Taxation, to prepare a report regarding the number of
41 certificates and taxpayers applying the tax credits, the amount of the
42 credits granted, the geographical distribution of the credits granted,
43 and any other information that the commissioner or the director may
44 deem useful or appropriate, including an evaluation of the
45 effectiveness of the tax credit as an incentive for the construction of
46 buildings in New Jersey meeting the highest level of performance
47 under the LEED Rating System and any recommendations for the
48 continuation of the tax credit.

1 Because traditional building is one of the most resource-
2 demanding industries in the United States, the use of “green”
3 building practices has the potential to significantly reduce waste
4 and dependence on finite resources. Green buildings use resources-
5 energy, water, materials, and land more efficiently and effectively,
6 and provide healthier environments for working, learning and
7 living. Green buildings are more environmentally-friendly because
8 the buildings minimize the negative environmental consequences by
9 lessening changes to the local natural environment, using recycled
10 or recyclable materials, incorporating renewable and energy
11 efficient power generation systems, using water resources more
12 efficiently, and producing less waste. Green buildings provide
13 employees with a healthier indoor work environment by effectively
14 controlling outdoor air ventilation systems and using alternative
15 paints, finishes, adhesives, furniture and fabrics that do not
16 negatively affect air quality.